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5 **BEFORE THE BOARD OF CONTROL**
6 **OF THE STATE OF CALIFORNIA**
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8 In the Matter of the Application of:

9 Merritt McKeon

Precedent Decision No. 98-01

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12 This matter arises under the Victims of Crime Program, Government Code sections 13959 et
13 seq. Applicant is the recipient of benefits under the Victims of Crime Program and now seeks
14 payment of attorney fees under Government Code section 13965(d).

15 The matter was scheduled for hearing by the State Board of Control March 24, 1998, in Los
16 Angeles. Applicant appeared and presented testimony and argument. The Board took the matter
17 under submission and now decides the matter as follows:

18 Applicant applied for benefits under the Victims of Crime Program. Staff
19 recommended that the claim be denied. Applicant requested a hearing and a hearing was held before
20 the Board on October 27, 1997. The Board found the applicant eligible for benefits and approved
21 reimbursement of \$560 in mental health counseling costs.

22 Applicant now seeks payment of \$500 in attorney fees under Government Code section
23 13965(d) which provides (in part):

24 The board shall pay attorney's fees representing the reasonable value of legal services
25 rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or
26 five hundred dollars (\$500), whichever is less for each victim and each derivative victim.
27 An attorney receiving fees from another source may waive the right to receive fees under
28 this section.
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1 This statute has never been interpreted by a court. However the California Supreme Court
2 addressed the general issue of payment of attorney fees to an attorney representing himself in Trope v.
3 Katz (1995) 11 Cal.4th 274.

4 In Trope v. Katz the Supreme Court “consider(ed) whether an attorney who chooses to litigate in
5 propria persona rather than retain another attorney to represent him in an action to enforce a contract
6 containing an attorney fee provision can nevertheless recover "reasonable attorney's fees" under Civil
7 Code section 1717 (hereafter section 1717) as compensation for the time and effort expended and the
8 professional business opportunities lost as a result.” The Court “conclude(d) that such an attorney
9 litigant cannot recover such fees under section 1717.” The Court reasoned, “Were we to construe the
10 statute otherwise, we would in effect create two separate classes of pro se litigants—those who are
11 attorneys and those who are not—and grant different rights and remedies to each. We find no support for
12 such disparate treatment either in the language of section 1717, in the legislative policy underlying it, or
13 in fairness and logic.”

14 The court noted that (1) an individual representing himself does not incur a fee; (2) that all the
15 California courts that had considered the matter had held for many years that an attorney representing
16 himself could not recover attorney fees under either a statute or contract; and, that an attorney
17 representing himself does not devote more time or effort to a matter than does any other person
18 representing himself.

19 Applying a parallel analysis to Government Code section 13965(d) leads to a similar result.
20 Government Code section 13965(d) authorizes the Board only to “... pay attorney's fees representing the
21 reasonable value of *legal services rendered to the applicant*.” Legal services are not “rendered to the
22 applicant” when the attorney represents him or herself. The attorney who represents him or herself in
23 an application to the Victims of Crime Program does not devote either more time or more valuable time
24 than does any other applicant representing him or herself to the program.

25 For the foregoing reasons, Applicant’s claim for payment of attorney fees is denied.

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27 CERTIFICATION
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1 I certify that the foregoing decision In the Matter of the Application of Merritt McKeon, was adopted by
2 the State Board of Control at its meeting of April 28, 1998, at Los Angeles, California.

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9 Catherine Close
10 Chief Counsel

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